NO. A3-03-50

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

IN RE: JURISDICTION OF REMOVAL FROM NORTH DAKOTA DISTRICT COURT OF QUIET TITLE ACTION INVOLVING LANDS QUITCLAIMED TO THE LITTLE SHELL BAND OF NORTH AMERICA, A TREATY TRIBE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
THE HONORABLE RALPH R. ERICKSON

OPENING BRIEF OF APPELLANTS DONALD JAMES; ALEXANDER AND ETHEL A. ALEXANDER

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IN PROPRIA PERSONA
RECOGNIZED LITTLE SHELL PEMBINA BAND MEMBER

SUMMARY AND REQUEST FOR ORAL ARGUMENT

The State of North Dakota did not bring a well pleaded complaint in its state action, because it purposefully chose not to name the indispensable party, The Little Shell Band who had been Quitclaimed the aforementioned property.

Various elected Officials of State Instrumentalities have violated the civil rights of the Appellants leading up to the removal.

The Appellants state that Jurisdiction is properly before The District Court and arises under Treaties made with the United States, Federal Question, 28 USC § 1331.

The District Court misunderstood the issues and ruled without any hearing of the facts for its conclusion and judgment order. The Court never ruled on the civil rights violations. The Court left moot, the issue of joinder of the indispensable party, as well as a complaint for interpleader, all pertinent issues before the court.

The District Courts refusal to gather facts and tailor relief on all issues brought to the Court by simply refusing jurisdiction has injured the Alexanders and the District Court's Judgment should be reversed.

Twenty minutes per side for oral argument is respectfully requested.

TABLE OF CONTENTS

ADDENDENDUM

TABLE OF AUTHORITIES

STATUTES AND OTHER REGULATIONS

JURISDICTIONAL STATEMENT

The Little Shell Pembina Band of North America (hereinafter Little Shell Pembina Band) is a treaty tribe and or band under the Treaty of 1863, 13 Stat. 667, (Oct. 2, 1863) recognized by the Indian Claims Commission, at 43 Ind. Cl. Comm. 673, in Docket No. 246, which was certified by the Indian Claims Commission and transferred to the United States Court of Claims on October 8, 1976. The transfer of the Little Shell Pembina Band's Docket No. 246 to the United States Court of Claims was recorded with the Clerk of the United States Court of Claims in Washington D.C., on September 29, 1978. The Little Shell Pembina Band holds aboriginal title to 62,000,000 acres of land, which comprises a large share of the North Dakota area as well as part of South Dakota and northeast Montana. Donald James Alexander is a Little Shell Pembina Band and is a recognized member of the Little Shell Pembina Band, pursuant to: Santa Clara Pueblo v. Martinez, 436 U.S. 1978, and appeals an order and judgment of the United States District Court for the District of North Dakota (Hon. Ralph R. Erickson) issued July 28, 2003 (Dist. Court No. A3-03-50). In that judgment, Judge Erickson remanded back to State District Court. Appellants subsequent Motion to vacate the order, or in the alternative a Motion to reconsider were denied on September 22, 2003. Judge Erickson did not rule on the Appellant's Counter complaint with Affidavit of Probable Cause

outlining alleged violations of Civil Rights on the part of State Elected Officials under 42 U.S.C. § 1983. Judge Erickson did not rule on Appellants request for injunctive relief as an "expressly authorized exception" under the anti injunction statute 28 U.S.C.§ 2283.

Federal district courts are vested with original jurisdiction of civil actions "brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior." 28 U.S.C.§ 1362. In the case of the Little Shell Pembina Band, the Indian Claims Commission, at 43 Ind. Cl. Comm. 673, in Docket No. 246, recognized the Little Shell Pembina Band. The District Court had jurisdiction over matters of the removal of the action from North Dakota State District Court pursuant to 28 U.S.C. § 1331, conferring original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States; 42 U.S.C. § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985, FRCP 28 § 1443, 18 U.S.C. § 241, 18 U.S.C. § 242, 28 U.S.C. § 1367 providing Supplemental jurisdiction.

This Court has jurisdiction under 28 U.S.C. §§ 1291-1292, providing jurisdiction of appeals from all final decisions of the District Courts of the United States and from interlocutory orders of the District Courts of the United States granting or refusing injunctions. Appellants filed a timely notice of

appeal on September 25, 2003 from the July 28, 2003 memorandum and order resulting from the Courts denial of Appellants Motion to Reconsider.

STATEMENT OF THE ISSUES

(See: Apposite Cases below under Argument - Standard of Review)

Standard of review; "de novo" Interpretation of Statutes, dismissal of complaint, issue of law subject to plenary review.

1. Whether the District Court erred in concluding that it lacked subject matter jurisdiction over Defendants claim that Plaintiff should have brought its action in Federal District Court because the indispensable party was the Little Shell Pembina Band, who is the holder of the said property by Quitclaim from Defendants and who fall under federal jurisdiction under 28 U.S.C. § 1331. There was no well pleaded complaint pursuant to: FRCP § 19(a) and (b) on the part of Plaintiff, State of North Dakota.

Standard of review; "denovo" Interpretation of statutes, dismissal of complaint, issue of law subject to plenary review.

2. Whether The Court erred in concluding that the Court lacked subject matter jurisdiction in the matter of violation of civil rights of Defendants committed by elected officials of instrumentalities of the State of North Dakota under 42 U.S. C. § 1983 under color of state law and various other state and federal statutes.

Standard of review; Clearly erroneous findings of historical fact.

3. Whether the Court erred in concluding that the Court lacked subject matter jurisdiction, in the matter of Plaintiff's taking of aboriginal lands without consideration. The subject parcel of Little Shell Land of this action was a small part of the 62,000,000 acres of the taking for which there was not consideration or accounting by Plaintiff, State of North Dakota.

Standard of review; "denovo" Interpretation of statutes, dismissal of complaint, issue of law subject to plenary review.

4. Whether the Court erred by not issuing a preliminary injunction in the matters before the Court regarding Plaintiffs lack of improper procedure in its State quite title action by not naming the indispensable party to the action and not issuing an injunction in the face of Plaintiff's violation of civil rights of Defendants pursuant to: 42 U.S.C. § 1983.

INTRODUCTION

The opening brief of Donald James and Ethel A. Alexander is hereby filed as an appeal of Judge Erickson's memorandum and order to remand back to the Federal District Court for the District of North Dakota Plaintiff's quiet title action. Before the Court are pending appeals of Judge Erickson's July 28,

2003 judgment to remand and Defendant's Motion to Vacate in the alternative a Motion to Reconsider, likewise denied by order on September 22, 2003.

The July 28, 2003 judgment denied as moot, Chief Ronald Delorme's The Little Shell Band's Motion to intervene. Left without Ruling is The Little Shell Pembina Band's Proposed Complaint for Interpleader and Declaratory Relief submitted by intervener, which the Little Shell Pembina Band and Ronald Delorme filed on September 16, 2003. Notice of Appeal regarding these matters was filed September 29, 2003. The Alexanders intend, pursuant to Fed. R. App. 28(i) and as appropriate, to adopt by reference portions of this opening brief in subsequent briefing to minimize duplication.

STATEMENT OF THE CASE

Appellant is a recognized member of the Little Shell Pembina Band of North America, registered as (LS 79084), a member of a Treaty Tribe. Santa Clara Pueblo v. Martinez, 436 U.S. 1978 The controversy involves tribal property described as: SW1/4 Section 10, SE1/4, S1/2 SW1/4 of Section 9, Township 149 North, Range 74 West.

The Basis of the controversy is that the Little Shell Pembina Band, the indigenous people, are the original legal title owner of the property, and the

Little Shell Pembina Band never sold or ceded said property to anyone and this land is deemed to be a small portion of their unceded property.

Upon review of the public record, the Little Shell Pembina Band became a treaty tribe in 1863, under the Treaty of 1863, 13 Stat. 667, (Oct. 2, 1863), and the Little Shell Pembina Band have never ceded away any of its rights.

A quite title action is brought by the State of North Dakota, whose agents deeded the land to the State of North Dakota in a foreclosure action. The State deeded the described property to itself, which is conveyance without delivery, effectively a fraudulent transfer or no transfer at all.

Appellants family has held a land patent, signed by Theodore Roosevelt, with chain of title for ninety-seven years. Upon researching the public record, Appellant discovered that the patented land was not part of the Louisiana Purchase, nor obtained by conquest and was unceded property of the the Little Shell Pembina Band. Appellant did then and there, Quitclaim the afore described property to the Little Shell Pembina Band, thus perfecting legal title and possession in the Little Shell Pembina Band.

The Sheridan County Recorder refused to record the Quitclaim Deed on the public record at the direction of the North Dakota Attorney General. Such action by an official of the State of North Dakota is a violation of the civil

right to equal access of Native Americans under color of state law, 42 U.S.C. § 1983. The Sheridan County recorder has described actions of the North Dakota Attorney General and the Sheridan County States Attorney, who willfully conspired with invidious discriminatory animus against Native Americans. These elected public officers have conspired to prevent collection of consideration owed by Plaintiff to the Little Shell Pembina Band for past taking of ceded and unceded lands.

The State of North Dakota owes the Little Shell Pembina Band consideration for the **taking** of the property, also for the benefits accrued to the State by the sale of natural resources (coal, oil, gas and the sale of license for harvest of game and fish). The State of North Dakota is still taking tribal property without consideration today.

Therefore certain officials and their agents are engaging in activity that, if not enjoined by this Court, will render property rights, of anyone residing in North Dakota, null and void.

Appellant seeks injunctive relief and an offset against consideration due the Little Shell Pembina Band from the State of North Dakota.

This action was removed to the North Dakota Federal District, a Court of equity, **"Pursuant to a promise to pay"** and Original Federal Question

Jurisdiction properly before the Court **arising under treaties of the United States.**

STATEMENT OF THE FACTS

IN FACT, Donald James; Alexander (79084) is a recognized member of the Little Shell Pembina Band.

IN FACT, The Little Shell Pembina Band is the legal title owner of the real property herein described in this action by ancestral right and has possession by way of Quitclaim Deed. (See: ADDENDUM **2**)

IN FACT, The State of North Dakota has intentionally chosen not to name the Little Shell Pembina Band in it's action to quite title to the herein described property, omission of the legal title owner.

Fed. R. Civ. P. 17 PARTIES, PLAINTIFF AND DEFENDANT

> Real Party in Interest. 'Every action shall be prosecuted in the name of the real party in interest'. …. 'No Action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

FAILURE TO JOIN AN INDESPENSABLE PARTY

Plaintiff has not filed a well-pleaded Complaint, by omission of the indispensable party to the action. A party is necessary and shall be joined as a party if:

Fed. R. Civ. P. 1**8 Joinder of Claims and Remedies**

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, cross-claim, or third party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.

Fed. R. Civ. P. 19 Joinder of Party's Needed for Just Adjudication

(1) in the party's absence complete relief cannot be accorded among those parties, or
(2) the party claims an interest relating to the subject of the action and is so situated that the disposition of the action in the party's absence may (i) as a practical matter impair or impede the party's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.**Fed. R. Civ. P. 19(a)** Further provides that in the absence of a necessary party the court must determine "whether in equity and good conscience the action should proceed among the parties before it**".** According to **Fed. R. Civ. P. 19(b)**, the Court should consider "to what extent a judgment rendered in the party's absence might be prejudicial to the party or those already parties; second, the extent to which, by protective provision in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the party's absence will be adequate; [and] fourth, whether the plaintiff will have an adequate remedy if the action is dismissed" under this rule.

Joinder of the Little Shell Pembina Band is therefore desirable. However the Little Shell Pembina Band enjoys the protection of sovereign immunity

against such joinder. (See Fluent, 928 f. 2d at 547). To permit the suit to continue absent the Little Shell Pembina Band would undermine Federal Congressional policy and contravene " the fact that society has consciously opted to shield Indian tribes from suit without Congressional or tribal consent". It is notable that it is for Congress alone to clearly and unequivocally change the federal policy of affording protection to the Indians and their lands. In equity and good conscience the action should not be permitted to proceed without the Little Shell Pembina Band as a party, rather, the action must be enjoined. (See Fed. R. Civ.P.) 19(b); Fluent, 928 F. 2d at 548.)

2. **FAILURE OF THE COURT TO ENJOIN PLAINTIFF FOR VIOLATION OF DEFENDANT'S CIVIL RIGHTS.**

IN FACT, by admission of the Sheridan County, North Dakota Recorder, the North Dakota Attorney General has conspired to violate the Civil Rights of Donald James Alexander by ordering the Sheridan County Recorder and the Sheridan County States Attorney to prevent Defendant, Alexander from recording his quitclaim deed to the Little Shell Pembina Band in the public record of Sheridan County. **V**iolation of **42 U.S.C. 1983 (**See; ADDENDUM 5, Counter Complaint with Affidavit of Probable Cause)

That Federal Jurisdiction is based on 28 U.S.C. 1343 (3). The Statute states in relevant part: "The District Court shall have original jurisdiction of any civil action authorized by law to be commenced by any person." ……(3)" To redress the deprivation, under color of any state law, Statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States…"

That The United States Supreme Court has ruled "An act of Congress, 42 U.S.C. § 1983, **Expressly Authorizes** a suit in equity to redress the deprivation, under color of law, of any rights, privileges, or immunities secured by the Constitution.

That Federal Jurisdiction is extended in civil rights matters when removal from State Court involves civil Rights pursuant to**: " An Act of Congress, Title 42 U.S.C. 1983, expressly authorizes a suit in equity ….. And is within that exception of the Federal anti-injunction statute, 28 U.S.C. 2283" (Mitchum v. Foster, 407 U.S. 225, 1972)**

That the very purpose of statute 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial' Ex parte Virginia, 100 U.S. at 346, 25 l. Ed. 676. In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in statute 42 U.S.C. § 1983 actions, by expressly authorizing a "suit in equity' as one of the means of redress.

IN FACT, The State of North Dakota does not have nor ever has had a contract with The Little Shell Pembina Band.

HISTORICAL BACKGROUND

In 1790 Congress passed, in keeping with the policy of protecting the Indians and their lands, the first Indian Trade and Intercourse Act, ch.33 Stat. 137, commonly referred to as the Non Intercourse Act, now codified at 25 U.S.C. 177. This legislation prohibited conveyance of Indian lands except by treaty with the federal government. Oneida II, at 231, 105 S. Ct. at 1251. Later amendments continue the prohibition on alienation of Indian land without congressional action. (See 25 U.S.C. § 177.)

The Indians' right to the possession of their aboriginal lands was assumed, and termination of such title was restricted. (Oneida II, 470 U.S. at 234, 105 S. Ct. at 1251.)

In 1970, the Oneida Nation brought a lawsuit seeking damages for the "illegal use and occupancy of a part of their aboriginal land" during 1968 and 1969. Oneida II, at 532. The suit was originally dismissed at the trial court level for lack of jurisdiction. Oneida II, at 530. On appeal, the United States Supreme Court found that Federal Question Jurisdiction existed. Oneida Nation v. County of Oneida, New York, 414 U.S. 661,678, 94 S. Ct. 782-83 (1974). After a finding of liability and the assessment of damages in the trial

court, The United States Supreme Court affirmed the Oneidas' federal common law right of action for unlawful possession of their lands. (Oneida II, 470 U.S. at 233, 105 S. Ct. at 1251.)

"In the absence of any different provision by treaty or by act of Congress, all the country described by the first section of the act of June 30, 1834(4 Stat.729), as Indian country, remains such as long as the Indians retain their title to the soil." (Bates v. Clark, 95 U.S. 204, 5 Otto 204, L.Ed.471 (1877)

"The very purpose of Statute 42 U.S.C. § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights--- to protect the people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial." Ex parte Virginia, 100 U.S. at 346, 25 L. Ed. 676. "In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in statute 1983 actions, by expressly authorizing a **'suit in equity'** as one of the means of redress. And this Court long ago recognized that federal injunctive relief against a state court proceeding can in some circumstances be essential to prevent great, immediate, and irreparable loss of a person's constitutional rights." Ex parte Young, 209 U.S. 123, 28 S. Ct.441, 52 L. Ed. 714; cf. Truax v. Raich, 239 U.S. 33, 36 S. Ct. 7, 60 L.Ed.131; Dombrowski v. Pfister,

380U.S. 479, 85 S. Ct. 1116, 14 L.Ed.2d 22. "For these reasons we conclude that, under the *243 criteria established in our previous decisions construing the anti-injunction statute, 1983 is an Act of Congress that falls within the 'expressly authorized' exception of the law." (Mitchum v. Foster, 407 U.S. 225, 92 S. Ct. 215.)

SUMMARY OF ARGUMENT

The District Court had subject matter jurisdiction under 28 U.S.C. §1331 and § 1362 to hear Defendant's removal from State Court to the United States District Court of Plaintiff's suit to quite title to property that is clearly part of an aboriginal land title held by the Little Shell Pembina Band.

The State Of North Dakota d/b/a as the Board of University and School Lands and the Bank of North Dakota, agent, for the State had brought their action in an attempt to clear title to the lands of this action. Defendant, who is Little Shell had quit claimed all right and title to the property back to the Little Shell Pembina Band, thus perfecting title and possession in the Little Shell Pembina Band.

Plaintiff, knowingly, improperly proceeded to bring its action against the Alexanders, not naming the Little Shell, who is the indispensable party by way of title to the lands.

Elected Officers of Instrumentalities of the State conspired to prevent Alexander from recording his quitclaim on the public record, violating civil rights under federal statute. These elected officers have displayed invidious discriminatory animus against Native Americans.

The lower Court had Jurisdiction under 42 U.S.C 1983 to enjoin the State of North Dakota from its action.

The District Court erred in its judgment that it was the just a quite title issue before the Court. This removal is well within the jurisdiction of the Court in that the indispensable party not named by the State in its action, is the Little Shell Pembina Band, a treaty tribe. By the Little Shell Pembina Band became a party, Little Shell Pembina Band which invoked Federal jurisdiction under 28 U.S.C. § 1331 and § 1362. The Court further erred by not enjoining the State of North Dakota for civil rights violations committed by elected officials of its instrumentalities. The remedy is in the Federal District Court for the District of North Dakota, whereas this Appellate Court may direct the lower Court to hear this action after having established that the lower Court has subject matter jurisdiction. Federal District Courts have exclusive jurisdicition over civil rights actions. **Nevada, et al., v. Hicks, et al.,** 533 U.S 353 (2001).

ARGUMENT

I. **STANDARD OF REVIEW.**

An appellate court reviews a district court's dismissal for lack of subject matter jurisdiction ***de novo***. See Gardener v. First Am. Title Ins. Co., 294 F.3d 991, 993 (8th Cir. 2002). When the district court's decision is based on the complaint alone, or the complaint supplemented by undisputed facts, the court determines whether the district court's application of law is correct and, if the decision is based on undisputed facts, whether those are indeed undisputed. See Osborn v. United States, 918 F.2d 724, 730 (8th Cir. 1990) (quoting Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir. 1981). If a district court relies on its own determination of disputed factual issues, the appellate court reviews those findings under the clearly erroneous standard. Osborn, at 730.

An appellate court reviews a district court's decision to grant or refuse a preliminary injunction for abuse of discretion and applies a ***de novo*** standard to legal conclusions made in the course of that decision. See Coteau Properties Co. v. Department of Interior, 53 F.3d 1466, 1472 (8th Cir.1995)(reversing denial of a preliminary injunction). See also City of Timber Lake v. Cheyenne River Sioux Tribe, 10 F.3d 554, 558 (8th Cir. 1993). (Reversing grant of injunction premised on legally erroneous view, that the tribe lacked liquor control and licensing authority).

II. THE DISTRICT COURT ERRED CONCLUDING THAT IT LACKED SUBJECT MATTER JURISDICTION TO ENJOIN THE PLAINTIFF'S ACTION WHEN THE REAL PARTY IN INTEREST WAS THE LITTLE SHELL INDIAN TREATY TRIBE.

The District Court's decision to remand this action back to the state court for lack of subject matter jurisdiction while seeking injunctive relief was incorrect as a matter of law. The District Court refused to find a cognizable federal claim because it mischaracterized the suit as one seeking only a quite title resolution. (See; Memorandum Opinion and Order remanding to state Court, July 28, 2003, ADDENDUM 3) Judge Erickson recites that since the particular property had been in a federal court before, once again it was the same quite title action.

Judge Erickson erroneously gives extensive instruction in diversity of citizenship between parties, in his order. Defendant, et.al., never invoked diversity citizenship as a basis of jurisdiction. Defendant brought his removal under civil actions arising under treaties of the United States because he is a member of the Little Shell Pembina Band, which makes him a recognized member of a treaty tribe to whom he had quitclaimed the said property.

Judge Erickson erroneously stated in his opinion he could find no matters involving Treaties with The United States, yet, Alexander instructs

extensively in his briefs on the Treaty of the Old Crossing giving the Little Shell Pembina Band treaty status with the United States.

Judge Erickson erroneously concludes that the case Turtle Mountain Band of Chippewa Indians v. the United States, 203 Ct. Cl. 426 (1974) offers no aid to jurisdiction. This case, clearly upon thorough examination, establishes and recognizes the Little Shell Pembina Band as a treaty tribe, and clearly establishes their unceded indigenous legal title to the lands of this action.

The Little Shell Pembina Band has never ceded any rights to their aboriginal indigenous lands, therefore they have title to the lands of this action.

In Alexander's Brief in Support of Removal on 6-10-2003, Alexander clearly instructs the Court repeatedly that the said property had been quitclaimed to the Little Shell Pembina Band and that Plaintiff incorrectly brought its action against Alexander et.al. That the Little Shell Pembina Band was an indispensable party. (Provided was Exhibit 1, Quitclaim Deed).

The **Real Party in Interest** (Rule 17) is The Little Shell Pembina Band.

The Court was made aware, from the beginning, by extensive instruction from Alexander, that the Little Shell Pembina Band was the **Real Party in Interest**.

PLAINTIFFS ACKNOWLEDGEMENT OF THE FACTS

Plaintiff's brief of July 14th, 2003 entitled, RESPONSE TO MOTION TO INTERVENE acknowledges that Alexander had indeed quitclaimed all right and title to the Little Shell Pembina Band.

Alexander nowhere relies upon his statement, informing the Court, that the Little Shell Pembina Band has been given a quitclaim deed, as a defense for removal to Federal District Court. Alexander informs the Court that Plaintiff has purposely omitted the Real Party in Interest. **IN FACT**, the foregoing statement is supported by the QUITCLAIM DEED (herein as ADDENDEM 2).

Plaintiff admits that he has been informed by Alexander's brief of June 10, 2003, that the lands of the action have been quitclaimed to the Little Shell Pembina Band, so stated as **"Defendant Alexander cited his alleged affiliation with a group, which he referred to as the "Little Shell Pembina Band of North America"--- a "Treaty tribe, not an executive order tribe" – to which he claims to have transferred by quitclaim deed his rights in the subject property."**

Alexander further states that he is Little Shell Pembina Band and that any reference to the Little Shell Pembina Band is one and the same, inclusive.

The Court erred in not joining the Little Shell Pembina Band as an indispensable party.

Fed. R. Civ. P. 19 Joinder of Indispensable Party's Needed for Just Adjudication.

> (1) in the party's absence complete relief cannot be accorded among those parties, or
> (2) the party claims an interest relating to the subject of the action and is so situated that the disposition of the action in the party's absence may (i) as a practical matter impair or impede the party's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Failure of the Court to join the indispensable party would grant partial or "hollow" rather then complete relief to the parties before the court.

> (1) The first factor brings in a consideration of what a judgment in the action would mean to the absentee indispensable party. cf. A.L. Smith Iron Co. v. Dickson, 141 F. 2d 3 (2d Cir. 1944); Caldwell Mfg. Co. v. Unique Balance Co., 18 F.R.D.258 (S.D.N.Y. 1955)
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> (2) The second factor calls attention to the measures by which prejudice may be averted or lessened. The "shaping of relief" is a familiar expedient to this end. Ward v. Deavers, 203 F.2d 72 (D.C. Cir. 1953); Miller & Lux, Inc. v. Nickel, 141 F. Supp 41 (N.D.Calif 1956.) on the use of "protective provisions". Atwood v. Rhode Island Hosp. Trust Co., 275 Fed. 513, 519 (1st Cir. 1921), cert. Denied, 257 U.S. 661 (1922)
>
> (3) The Third Factor—whether an "adequate" judgment can be rendered in the absence of a given party – calls attention to the extent of the relief that can be accorded among the parties joined. It meshes with the other factors, especially the "shaping of relief" mentioned in the second factor. See Cf. Kroese v. General Stell Castings Corp., 179 F.2d 760 (3d Cir. 1949). Cert. Denied, 339 U.S. 983 (1950).

(4) The fourth factor, looking to the practical effects of a dismissal, indicates that the court should consider whether there is any assurance that the plaintiff, if dismissed, could sue effectively in another forum where better joinder would be possible. See Fitzgerald v. Haynes, 241 F.2d 417, 420 (3d **Cir. 1957)**

A party is "regarded as indispensable" when he cannot be made a party and, upon consideration of the factors above mentioned, it is determined that in his absence it would be preferable to dismiss the action, rather then retain it.

The Court erroneously did not act on the LITTLE SHELL'S Interpleader for which the court has original Jurisdiction under Title 28 U.S.C. § 1335, 1397 and 2361.

Fed. R. Civ. P. **22 Indispensable Party as Interpleader**

(1)Persons having claims against the plaintiff may join as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in **Rule 20.**

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, U.S.C. § 1335, 1397 and 2361. (As amended eff. Aug. 1, 1987.)

III. VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983.

THE DISTRICT COURT ERRED BY NOT HEARING THE DEFENDANTS' COUNTER COMPLAINT OF CIVIL RIGHTS VIOLATIONS SUPPORTED BY HIS AFFIDAVIT OF PROBABLE CAUSE.

The District Court had Jurisdiction to hear Defendant's cause of action for a counter complaint alleging violation of his civil Rights under 42 U.S.C. § 1983 and other federal statutes.

The District Court has original jurisdiction to hear violations of civil rights under provisions of the United States Constitution and the Fourteenth Amendment to the Constitution.

Defendant has filed with the Court his Affidavit of Probable Cause alleging by affidavit violations of his civil rights by elected officials of instrumentalities of the State of North Dakota. **(See Appendix 5 ; Counter complaint with Affidavit of Probable Cause.)**

Plaintiff states that he has a well pleaded complaint, but in truth it is a nullity because it does not name the **Real Party in Interest the Little Shell Pembina Band, the indispensable party.** Plaintiff has knowingly and cleverly evaded the central issue of the action, who is the legal title owner of the said property in Sheridan County? The Court has erroneously chosen not to hear this Fact.

The Plaintiff had not only failed to bring action in the name of the Real Party in Interest, but has engaged, by action of certain elected officials of the State of North Dakota, in a **conspiracy** to prevent recording on the public record of the real party in interest so named in the quitclaim deed showing the Little Shell Pembina Band as the real legal title holder of the said property.

Plaintiff, the State of North Dakota, has applied it's power to coerce elected county officials into violation of the civil rights of Donald James Alexander, a recognized Little Shell Pembina Band, by refusing to record a quitclaim deed, thus denying equal access to the public record for recordation of a quitclaim deed, (Impairment of Contract, Article 1, Section 10, United States Constitution) by either Alexander or the Chief of the Little Shell Pembina Band. Such violation of civil rights are under 42 U.S.C. §§ 1983, 1985(3) Conspiracy by governmental officers who take an oath to uphold the laws. The officers of State and County instrumentalities have, **in fact**, violated their oaths of office to uphold the United States Constitution, thus violating Alexander's Fourteenth Amendment Civil Rights denying due process and equal protection.

That Officers of Instrumentalities of The State of North Dakota have allegedly conspired to deprive and interfere Alexander's civil Rights under 42 U.S.C. § 1985 (3) Conspiracy against Native Americans

motivated by invidious discriminatory animus. (Griffin v. Breckenridge Et.Al. 403 U.S. 88) **(See ADDENDUM 5, Affidavit of Probable Cause).**

The Court erroneously never considered the Defendant's Civil Rights claims. The Court had jurisdiction based on 28 U.S.C. § 1343(3).

1. That federal jurisdiction is based on Title 28 U.S.C. 1343 (3). The statute states in relevant part; **" The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person;"…. "(3) To redress the deprivation, under color of any state law, Statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States…"**

2.**That the United States Supreme Court has ruled " An Act of Congress, 42 U.S.C. § 1983 expressly authorizes a suit in equity to redress the deprivation, under color of State law, of any rights, privileges, or immunities secured by the Constitution."**

3**. That federal jurisdiction is extended in civil Rights matters when removal from State Court involves civil rights, pursuant to: " An Act of Congress, Title 42 U.S.C. 1983, Expressly Authorizes a suit in equity… ..And is within that exception of the federal anti-injunction statue, 28 U.S.C § 2283." (Mitchum v. Foster, 407 U.S. 225, 1972)**

Admission of civil rights violation against Donald James Alexander (See APPENDIX 3, Affidavit of Probable Cause)

Joyce Dockter, elected recorder for Sheridan County, North Dakota has admitted that Walter Lipp, Sheridan County States Attorney, did, **IN FACT**,

act under instruction of the North Dakota Attorney General and did give orders to the recorder, prohibiting Donald James Alexander to file on the public record, thus denying Alexander equal access to the public record, violating 42 U.S.C. 1983 under color of state law and 42 U.S.C. 1981, violation of (equal rights under the law) by discrimination based on an invidious discriminatory animous against Native Americans by **"Impairment of Obligation of Contract." Article 1, Section 10,The Constitution of the United States.**

That, the Court in error, should have enjoined Plaintiff's and it's agents from further violation of Defendants' civil rights. That Judge Erickson was provided with probable cause to enjoin the Plaintiff and it's agents from further injury of Defendant. (See ADDENDUM 5).

42 U.S.C.A. 1983

> "State officials can only be held accountable under this section in federal courts for conduct and actions taken pursuant to their official duties where a clear showing is made of a violation of some federal constitutional right." (Cole v. Smith, C.A. 8 Minn. 1965, 344 F.2d 721)
>
> "To assert 1983 claim, Plaintiff must establish deprivation of constitutionally protected right under color of state law." (Hanton v. Gilbert, M.D.N.C. 1944, 842 F. Supp. 845.)

Title 18 U.S.C. § 241

> Section 241 of title 18 is the civil rights conspiracy Statute. Section 241 makes it unlawful for two or more persons to agree together to injure, threaten, or intimidate a person in any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him by the constitution or the laws of the United States, (or because of his/her having exercised the same) Unlike most conspiracy statutes, Section 241 does not require that one of the conspirators commit an overt act prior to the Conspiracy becoming a crime.

Title 18 U.S.C., § 242

> Whoever, under the color of any law, statute, ordinance, regulation, or custom, willingly subjects any person in any State, Territory, commonwealth, possession, or district to deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains or penalties, on account of such person being alien, or by reason of his color, or ***race***, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both….."

IV. The Court erred in not granting an injunction upon request of the Defendants.

Federal Courts are empowered to enjoin state Court proceedings, despite anti-injunction statute, in carrying out the will of Congress under legislation (1) providing for removal of litigation from state to federal courts…. (3) providing for federal interpleader actions…. 28 U.S.C.A. 1441-1450, 1446(e), 2251, 2283, 2361: 46 U.S.C.A. 185. Mitchum V. Foster, 407 U.S. 225, 92 S. Ct. 2151.

When a claim seeking injunctive relief is dismissed, even on jurisdictional grounds, the effect of the dismissal is to deny the ultimate

equitable relief sought and the order is appealable under 28 § 1292 (a)(1)". Cohen v. Board of trustees, 867 F2d at 1464.

In circumstances like those presented by the instant case, courts of appeals have themselves ordered the entry of injunctive relief. See, e.g., Hanton v. Gilbert, M.D.N.C. 1944, 842 F. Supp. 845. (Reversing denial of preliminary injunction and directing district court to order relief); White v. Roughton, 530 F.2d 750, 754-55 (7th Cir. 1976) reversing denial and ordering district court to grant preliminary injunction reinstating plaintiff's welfare benefits pending final adjudication); Southeastern Promotions, Ltd. V. Mobile, 457 F.2d 340, 340(5th Cir. 1972) ordering district court to "grant a preliminary injunction in the manner and form sought by plaintiff to allow presentation of theatrical production in public auditorium); Milsen Co. v. Southland Corp.,454 F.2d 363, 369 (7th Cir.1971) ("Where the lower court's conclusions and applications of law are erroneous, as we have found here, even the denial of a preliminary injunction should be reversed if necessary to protect the parties' rights").

In this appeal, this court can and should remedy the errors made by recognizing that jurisdiction exists and by ordering the granting of the injunctive relief the Defendants have sought from the beginning.

Conclusion

For the reasons set forth above, Defendants, Donald James Alexander et.al., respectfully request the Eight Circuit Court of Appeals reverse the Federal District Court for the District of North Dakota order of July 28, 2003, and remand this matter back to the lower Court with directions to grant injunctive relief requested by Defendant and to try this case, ***de novo***, by finding of fact and conclusion of law.

Dated: November 22, 2003

Respectfully submitted,

_____

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_____

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(A)(7)(C) AND EIGHTH CIRCUIT RULE 28A(c)

The undersigned hereby certifies, pursuant to Federal Rule of Appellate Procedure 32 (a)(7)(c) and eighth Circuit Rule 28A(c), that this brief (exclusive of the statement with respect to oral argument, the table of contents. The table of citations, any addendum, and any certificates of Counsel) contains 6516 words, as ascertained using the word count feature of the Microsoft Word 2000 word processing software used to prepare the Brief, and conforms to the typeface and typestyle requirements of the Rules by being 14-point Times New Roman font.

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